

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYREKE A. SPENCER,	§
	§
Defendant-Petitioner Below,	§ No. 484, 2022
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ C.A. No. N22C-12-071
	§
Appellee.	§

Submitted: March 30, 2023

Decided: May 16, 2022

**ORDER**

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

After consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Tyreke A. Spencer, filed a civil complaint in the Superior Court seeking a declaration that his habitual-offender sentence is illegal and asking the court to enjoin the State from classifying one of his predicate offenses as a violent felony for purposes of habitual-offender sentencing. The Superior Court dismissed the complaint upon initial review, concluding that the complaint was legally frivolous and that it was plain on the face of the complaint that Spencer was not entitled to relief, because his claims are not cognizable in a civil action. Spencer has appealed to this Court. The State has moved to affirm the judgment below on

the ground that it is manifest on the face of Spencer’s opening brief that his appeal is without merit. We agree and affirm.<sup>1</sup>

(2) A Superior Court jury found Spencer guilty of two counts of drug dealing, two counts of possession of a firearm during the commission of a felony (“PFDCF”), and possession of drug paraphernalia. The charges arose from conduct that occurred on September 6, 2016.<sup>2</sup> The State sought habitual-offender sentencing for the PFDCF counts. The State’s habitual-offender motion alleged three predicate offenses: a Delaware conviction for second-degree robbery in 1998; a Delaware conviction for possession of a destructive weapon in 2001; and a federal conviction for felon in possession of a firearm in 2007. The Superior Court declared Spencer to be a habitual offender and sentenced him for one of the PFDCF offenses to twenty-five years of incarceration under 11 *Del. C.* § 4214(d). This Court affirmed on direct appeal.<sup>3</sup> In 2019, Spencer filed a motion for postconviction relief. The Superior Court denied the motion on April 22, 2021.<sup>4</sup> This Court dismissed Spencer’s appeal from that decision as untimely.<sup>5</sup>

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<sup>1</sup> To the extent that the State’s motion does not fall squarely under Supreme Court Rule 25(a) or (b), we affirm *sua sponte* under Rule 25(c).

<sup>2</sup> *Spencer v. State*, 2018 WL 3147933, at \*1 (Del. June 25, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> *State v. Spencer*, 2021 WL 1574439 (Del. Super. Ct. Apr. 22, 2021).

<sup>5</sup> *Spencer v. State*, No. 178, 2021, Docket Entry No. 11 (Del. Aug. 11, 2021).

(3) On December 8, 2022, Spencer filed a civil action in the Superior Court. The complaint sought declaratory and injunctive relief on the grounds that the State of Delaware was without authority to classify Spencer's 2007 federal conviction as a violent felony for purposes of habitual-offender sentencing. The Superior Court dismissed the complaint upon initial review, holding that Spencer's claims were governed by the Superior Court Rules of Criminal Procedure and that Spencer could not collaterally attack his sentence through a request for a civil declaration.

(4) We affirm the Superior Court's judgment. The court correctly concluded that a civil action for declaratory and injunctive relief cannot be used to collaterally attack a criminal conviction or sentence.<sup>6</sup> In any event, the record of Spencer's criminal case reflects that his claim that he was not subject to sentencing under Section 4214(d) is without merit. Even if his federal offense did not constitute a predicate offense under Section 4214(d), he was eligible for habitual-offender sentencing under Section 4214(d) based on his two predicate state offenses.

(5) The version of Section 4214(d) in effect at the time of Spencer's PFDCF offense provided:

Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the

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<sup>6</sup> *Cf. Morrissey v. State*, 2016 WL 5899241 (Del. Oct. 10, 2016) (“[T]he Superior Court Civil Rules may not be used in a criminal proceeding to collaterally attack a conviction or to modify a sentence.” (citations omitted)).

United States, and who shall thereafter be convicted of a third or subsequent felony which is a Title 11 violent felony, or an attempt to commit such a violent felony, as defined in §4201(c), shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the third or subsequent Title 11 violent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment . . .<sup>7</sup>

As noted above, in addition to the prior federal offense, Spencer had prior convictions in Delaware for second-degree robbery in 1998 and possession of a destructive weapon in 2001. Both of those convictions constituted predicate violent felonies.<sup>8</sup> Spencer's conviction for PFDCF was therefore his third violent-felony conviction,<sup>9</sup> and he was eligible for sentencing under Section 4214(d) without regard to his federal conviction.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor  
Justice

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<sup>7</sup> 11 Del. C. § 4214(d) (effective July 19, 2016, to Apr. 12, 2017). *See Johnson v. State*, 2023 WL 2671805, at \*2 (Del. Mar. 28, 2023) (“[T]he version of the habitual offender statute that applies is the one in effect [when] the defendant committed the offense for which he is being sentenced.”).

<sup>8</sup> *See* 11 Del. C. § 4201(c) (effective Sept. 3, 2015, to present) (designating second-degree robbery and possession of a destructive weapon as violent felonies).

<sup>9</sup> *See id.* (designating PFDCF as a violent felony).